

RESOLUTION NO. 2014-59

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH TC TECHNOLOGY, OF CARLSBAD, FOR SOFTWARE IMPLEMENTATION AND TRAINING SERVICES FOR PHASE II.I INTEGRATION OF THE ELECTRIC UTILITY'S GEOGRAPHICAL INFORMATION SYSTEM

WHEREAS, the Electric Utility (EU) is continuing the multi-phase project with Environmental Systems Research Institute, Inc. (ESRI) for the geographical information system (GIS); and

WHEREAS, as part of the next phase, staff recommends the purchase of a mobile inspection/reporting software to provide time and cost savings for regulatory mandated inspection cycles of the electric system by automating the inspection processes; and

WHEREAS, in order to enable the mobile solutions implementation, staff undertook an extensive process to research and evaluate potential software solutions and determined that GO! Sync Mobile Software from TC Technology will address EU's needs and is the product predominantly being used by other public power utilities nationwide for the purpose of automating their system inspection processes, enhancing the data collection from inspections, and integrating that information into a GIS system; and

WHEREAS, TC Technology has provided a quote of \$13,755 for the software and \$18,000 for implementation and training services, as shown on the attached exhibits; and

WHEREAS, the bidding process for this software purchase and associated services may be dispensed per Lodi Municipal Code 3.20.075, Professional/technical services contracts, 8. Computer consulting services; and

WHEREAS, implementation of mobile inspection/reporting software will provide cost savings through improved operational efficiency of the electrical distribution system, increased safety, and create a more reliable electric system by mitigating electrical outages; and

WHEREAS, funding is included in Fiscal Year 2013/14 Budget Account No. 160612.7323; and

WHEREAS, staff recommends the City Council authorize the City Manager to execute a Professional Services Agreement with TC Technology, of Carlsbad, for Phase II.I mobile inspection/reporting and integration of the EU's GIS.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with TC Technology, of Carlsbad, for Phase II.I mobile inspections/reporting and integration of the Electric Utility's geographical information system in an amount not to exceed \$18,000.

Dated: May 7, 2014

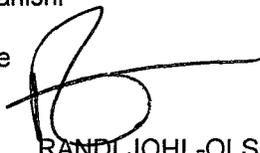
I hereby certify that Resolution No. 2014-59 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2014, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Nakanishi

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON
City Clerk

EXHIBIT A



Carlsbad, CA 92008
Phone: (760) 929 8345
Fax: (760) 692 0484

QUOTATION #:

LE_042214_LICENSES

DATE: April 22, 2014

CUSTOMER:

Lodi Electric Utility
1331 South Ham Lane
Lodi, CA 95242

CONTACT: Carl Wohl

PHONE: (209) 333 6800 x2547

Product Code	Description	Price	QTY	Extended
Licenses				
GS_MBE_IE	GO! Sync Mapbook with Inspection and Sketching extension with embedded ArcGIS Engine (Client)	\$ 1,195.00	9	\$10,755.00
GS_MGS	GO! Sync Server (includes Inspection and Sketching Server)	\$ 3,000.00	1	\$ 3,000.00
TOTAL				\$13,755.00

1. Quote valid for 60 days
2. All prices are quoted in US Dollars and are subject to change without notice.
3. All software quotes are inclusive of complimentary support and maintenance for the first 12 months. Eligibility for support and maintenance beyond the first 12 months requires additional subscription fees.
4. GO! Sync Mapbook requires ArcGIS Engine (embedded option included in quote above)
5. MIMS Server (previously known as GO! Sync Mobile GIS Server) requires either Esri ArcGIS Editor or ArcGIS Engine with Geodatabase Update Extension (embedded option NOT included in quote above).
6. GO! Sync Standard Remote Implementation Services estimated; scope adjustment could alter estimate.

This Quotation is made in confidence of your review. It may not be disclosed to third parties, except as required by law.

Quoted By: Carrie Turner
Email: carrie.turner@tctechology.com

Account Manager: Carrie Turner
Email: carrie.turner@tctechology.com

LICENSE AND SERVICE AGREEMENT

END USER SOFTWARE LICENSE AGREEMENT and TERMS OF SERVICE AGREEMENT

THIS SOFTWARE LICENSE and SERVICE AGREEMENT

is made by and between

CITY OF LODI
P.O. Box 3006
Lodi CA 95241-1910
(hereinafter referred to as 'LICENSEE')

AND

Tadpole Cartesia, Inc.
doing business as TC Technology
with principal place of business at
2231 Faraday Avenue Suite 140
Carlsbad, CA, 92008, U.S.A.
(hereinafter referred to as 'LICENSOR').

Agreement Number: LE_042214_SERVICES

LICENSE AND SERVICE AGREEMENT

1. Definitions applicable to this license

1.1 LICENSED SOFTWARE: refers singularly and/or collectively to computer programs provided by the LICENSOR (not including 3rd party software) and shall include any improvements modifications or developments provided by the LICENSOR under the terms of this Agreement.

1.2 OBJECT CODE: means the compiled form of the LICENSED SOFTWARE.

1.3 SOURCE CODE: means textual source form of the LICENSED SOFTWARE.

1.4 PROGRAM DOCUMENTATION: means any material or documentation relating to the LICENSED SOFTWARE provided by the LICENSOR.

1.5 SECURITY DEVICE: A software license manager that may be supplied with the program. When the LICENSED SOFTWARE includes the requirement to use a SECURITY DEVICE, the program will run only when the SECURITY DEVICE is correctly used and all references to the LICENSED SOFTWARE herein shall include and assume use of the SECURITY DEVICE

1.6 A DEFECT is defined as a failure to perform any function specified in the current published documentation of the LICENSED SOFTWARE. A limitation in performance shall not be construed as a DEFECT.

2. Term

This Agreement shall be effective from the date of installation of LICENSED SOFTWARE and shall remain in force indefinitely unless issued for a fixed period.

3. Software License

3.1 Right to Use: In consideration of the payment of an annual license fee by the LICENSEE to the LICENSOR as provided in this agreement, LICENSOR grants to LICENSEE, a non-exclusive, right to use the LICENSED SOFTWARE and the PROGRAM DOCUMENTATION for a one year period subject to the terms and conditions herein. The license is for use throughout the LICENSEE's organization.

3.2 Use of the LICENSED SOFTWARE obligates LICENSEE to pay a mandatory annual update fee and failure to pay the mandatory annual update fee results in termination of the right to use the LICENSED SOFTWARE. Refer to paragraph 7.4 for the effects of termination of Software.

3.2 Title: Title, copyright and all other proprietary rights in the LICENSED SOFTWARE, manuals and all parts and copies thereof shall remain vested in the LICENSOR. No ownership of the LICENSED SOFTWARE is transferred to the LICENSEE.

3.3 No Transfer: The program may not be transferred, assigned, rented, leased, sold or otherwise disposed of or made available except as expressly provided herein.

3.4 Number of Users: The LICENSE granted under this Agreement authorizes the LICENSEE to use, subject to the obligations of confidence set forth in this Agreement, and to permit others to use in accordance with the provisions of paragraph 3.7 of this Clause of the LICENSED SOFTWARE for users within the LICENSEE'S organization.

3.5 No Reverse Engineering: The right to reverse engineer or disassemble the LICENSED SOFTWARE (which is provided in OBJECT CODE format only) is specifically excluded, except to the extent that such exclusion is not permitted under the law of the country of authorized use. LICENSEE will do nothing to dis-enable any SECURITY DEVICE.

LICENSE AND SERVICE AGREEMENT

3.6 Limited Right to Copy: The LICENSEE may copy the LICENSED SOFTWARE for the purpose of making back-up copies of the LICENSED SOFTWARE supplied under this Agreement. Software may not be copied for the purpose of error correction.

3.7 Third Party Access: The LICENSEE may grant access to the LICENSED SOFTWARE to consultants and contractors acting on behalf of LICENSEE who agree to substantially similar obligations and conditions of confidence as those binding the LICENSEE under this Agreement.

3.8 No Derivative Works: The LICENSEE may not create derivative works based on the LICENSED SOFTWARE and PROGRAM DOCUMENTATION without the written consent of the LICENSOR.

3.9 Documentation: The LICENSEE will hold the LICENSED SOFTWARE and PROGRAM DOCUMENTATION in confidence. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this Agreement.

3.10 Audit Right: Promptly on request, LICENSEE will permit LICENSOR to have access to LICENSEE systems and to use software tools on LICENSEE's systems to ensure LICENSEE is using its software in accordance with its license terms

4. Warranty

4.1 Warranty: The LICENSOR warrants that for a period of ninety (90) days from delivery the LICENSED SOFTWARE shall perform substantially in accordance with the published specification of the LICENSED SOFTWARE, current at the time of delivery. Further, the LICENSOR warrants that use of the LICENSED SOFTWARE by the LICENSEE will not infringe any copyright, trade secret or proprietary interest of any third party.

4.2 Warranty Exclusions: **THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE ENTIRELY ERROR-FREE OR THAT ALL PROGRAM DEFECTS ARE CAPABLE OF CORRECTION OR IMPROVEMENT. ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR PURPOSE OR ABILITY TO ACHIEVE A PARTICULAR RESULT ARE HEREBY EXCLUDED. IN THE ABSENCE OF FRAUD, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE LICENSOR OR ITS AGENTS, DISTRIBUTORS, OR DEALERS SHALL CREATE A WARRANTOR GIVE RISE TO ANY OTHER LIABILITY OTHER THAN IS GIVEN IN THIS AGREEMENT. LICENSEE'S STATUTORY RIGHTS AS A CONSUMER (IF ANY) ARE NOT AFFECTED BY THESE TERMS AND CONDITIONS.**

5. Maintenance and Support

5.1 Service: Subject to the terms and conditions herein the LICENSOR agrees to provide the Maintenance and Support Service as described below for the LICENSED SOFTWARE provided that the annual license fee for the period has been fully paid.

5.2 Service Description: The Maintenance and Support Service to be provided by the LICENSOR is as follows:

5.2.1 The Maintenance and Support Service support shall be provided by the LICENSOR and its agents designated as qualified for the purpose by telephone, mail, E-mail or fax during normal working hours (local time) of the LICENSOR or its agents on Mondays to Fridays. The LICENSOR'S normal working hours are 8.00 am to 6.00 p.m., United States Pacific time, from Monday to Friday but excluding public holidays.

5.2.2 The correction of detected defects in the LICENSED SOFTWARE.

LICENSE AND SERVICE AGREEMENT

5.2.3 The incorporation of improvements to the LICENSED SOFTWARE, together with supporting documentation, which are or will be part of the LICENSED SOFTWARE itself and not part of separately identifiable tasks, modules or packages to be licensed under separate agreements.

5.2.4 The LICENSOR will use reasonable endeavors to deal promptly with DEFECTS in the LICENSED SOFTWARE by making available its personnel.

5.2.5 When the LICENSEE requests support on site, agreed travel, accommodation and subsistence expenses incurred by personnel working away from the LICENSOR'S offices in the execution of these obligations shall be for the LICENSEE'S account and shall be payable within thirty (30) days of invoicing of the LICENSEE by the LICENSOR at the invoice address set forth herein.

5.2.6 Updates or replacements of the technical manuals relating to the LICENSED SOFTWARE will be forwarded to the LICENSEE as they become available, at the agreed costs of reproduction and postage. Obligations of confidence set forth above apply to such updates.

6. Liability

6.1 Personal Injury & Death: LICENSOR will indemnify LICENSEE for personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement.

6.2 Tangible Property: LICENSOR will indemnify LICENSEE for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement. LICENSOR'S TOTAL LIABILITY UNDER THIS CLAUSE SHALL BE LIMITED TO ONE MILLION DOLLARS FOR ANY ONE EVENT OR SERIES OF CONNECTED EVENTS.

6.3 Delay: While LICENSOR shall use reasonable commercial efforts to meet delivery times, LICENSEE's only remedy for unreasonable delay in delivery will be the right to terminate this Agreement after service of notice of breach as set out below, plus a refund of any fees paid by LICENSEE for no benefit.

6.4 Other Exclusions: **SAVE IN RESPECT OF CLAIMS FOR DEATH OR PERSONAL INJURY ARISING FROM LICENSOR'S NEGLIGENCE, IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA OR USE, LOST PROFITS, LOSS OF ANTICIPATED SAVINGS, NOR FOR ANY DAMAGES THAT ARE AN INDIRECT OR SECONDARY CONSEQUENCE OF ANY ACT OR OMISSION OF LICENSOR, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE OR ACTUALLY FORESEEN.**

6.5 Maximum Liability: **EXCEPT AS PROVIDED ABOVE IN THE CASE OF PERSONAL INJURY, DEATH, AND DAMAGE TO TANGIBLE PROPERTY, LICENSOR'S MAXIMUM LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER (WHETHER IN THE FORM OF THE ADDITIONAL COST OF REMEDIAL SERVICES OR OTHERWISE) WILL BE FOR DIRECT COSTS AND DAMAGES ONLY, AND WILL BE LIMITED TO A SUM EQUIVALENT TO THE PRICE PAID TO LICENSOR FOR THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF LICENSEE'S CLAIM, PLUS DAMAGES LIMITED TO TWENTY-FIVE PER CENT (25%) OF THE SAME AMOUNT FOR ANY ADDITIONAL COSTS DIRECTLY, REASONABLY AND NECESSARILY INCURRED BY LICENSEE IN OBTAINING ALTERNATIVE PRODUCTS AND/OR SERVICES.**

6.6 General: LICENSEE's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause, "LICENSOR" includes its employees, sub-contractors and suppliers. LICENSEE acknowledges that LICENSOR has been appointed as the agent of its employees, sub-contractors and suppliers to agree the provisions of this on their behalf.

LICENSE AND SERVICE AGREEMENT

7. Termination

7.1 Routine Termination: The LICENSEE and the LICENSOR shall each have the right to terminate this License and Agreement and / or the Maintenance and Support Service subject to the terms of this Agreement without prejudice to the other rights and obligations of this Agreement.

7.2 Termination for Non-Payment of Fees: The LICENSOR shall have the right to terminate the annual license if the current annual license fee has not been received by the LICENSOR within thirty days after the expiry of the previous annual period.

7.3 Termination for Breach: The LICENSOR shall have the right to terminate this License and Agreement in the event of the LICENSEE'S breach of copyright or other terms thereof provided the LICENSOR has given the LICENSEE not less than thirty days prior written notice of breach and the LICENSEE shall have failed to remedy the same.

7.4 Consequences of Termination: In the event of termination of this License and Agreement, the LICENSED SOFTWARE and PROGRAM DOCUMENTATION shall be returned immediately to the LICENSOR, and all copies of the LICENSED SOFTWARE shall be erased from the computer system and its back-up media. The LICENSEE shall confirm within thirty (30) days in writing that all copies and the operational copy of the LICENSED SOFTWARE have been erased or are in process of return to the LICENSOR. The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to the respective rights and liabilities of either of the parties accrued prior to such termination.

8. Confidential Information of LICENSEE

8.1 All information relating to the LICENSEE and the LICENSEE'S operations, including information relating to third parties which is made available to the LICENSOR in connection with this License and Agreement, shall be held strictly confidential by the LICENSOR notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSOR independently of this License and Agreement.

8.2 The LICENSOR will not use the name of the LICENSEE in connection with any advertising nor any publication without LICENSEE'S prior written consent.

9. Confidential Information of LICENSOR

All information relating to the LICENSOR and the LICENSOR'S operations, including but not limited to SOURCE CODE and PROGRAM DOCUMENTATION which is made available to the LICENSEE in connection with this License and Agreement, shall be held strictly confidential by the LICENSEE notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this License and Agreement.

10. Construction and Applicable Law

10.1 Law & Disputes: This Agreement shall be governed and construed in accordance with the laws of the state of California and any actions seeking to enforce the terms and conditions of this Agreement or any claim for damages arising from a breach of this Agreement shall be filed in California save that Licensor shall have the right at its absolute discretion to initiate proceedings to recover sums owing to it and/or to enforce its intellectual property rights in the courts of any jurisdiction in which its Licensee carries on business, in which assets of Licensee are located, or, in which Licensor's software is used. If either party shall invoke legal proceedings, of any nature, to enforce the terms and conditions of this Agreement, or to impose a claim for damages against a breaching party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

LICENSE AND SERVICE AGREEMENT

10.2 Headings: The headings of Clauses in this License and Agreement are included herein for convenience and shall not be considered in construing this License and Agreement.

10.3 Severability: In the event that any of these terms, conditions, or provisions shall be determined invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall be severed from the remaining terms, conditions, or provisions which shall continue to be valid to the fullest extent permitted by law.

11. Notices

Any notice given hereunder shall be deemed to have been sufficiently served if sent in writing by prepaid certified mail or communicated by fax addressed to the last known address of the addressee and the same shall be deemed to have been served when in the ordinary course of transmission it would have been received.

12. Miscellaneous:

12.1 Force Majeure: LICENSOR is not responsible for delay or failure to perform due to causes beyond its reasonable control, including but not limited to, fire, flood, act of God or insolvency of subcontractors or suppliers or inability to obtain products, licenses or services from third party suppliers.

12.2 Waiver: No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.

12.3 Amendment: This Agreement shall not be modified or amended except by agreement in writing by an authorized representative of each of the parties.

LICENSE AND SERVICE AGREEMENT

Schedule A

This Schedule is attached to and becomes, upon execution by both parties below, a part of the Software License and Maintenance Agreement Number LE_042214_SERVICES between the parties and sets forth the specific terms and conditions relating to the Licenses Software listed below. This replaces any previous Schedule A attached to the above Agreement.

Effective Date: May 7, 2014

Invoice Address	Installation Address
Company Name: CITY OF LODI - EU	Company Name: CITY OF LODI - EU
Street Address: PO BOX 3006	Street Address: 1331 S. Ham Lane Lodi, CA 95242
Attention: Carl Wohl	Attention: Carl Wohl

Product Name	Qty	Unit Price	Extended Price
GO! Sync Mobile GIS Standard Implementation Services (Mapbook, Inspection and Sketching)	1	\$12,000.00	\$12,000.00
Patrol Inspection Standard Implementation Services	1	\$4,500.00	\$4,500.00
GO! Sync Mobile GIS End-User Training (Agreed to 10 per class) (Onsite or remote training class-travel expenses not included in price)	1	\$1,500.00	\$1,500.00
		Total	\$18,000.00

LICENSE AND SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

CITY OF LODI, a municipal corporation

By: _____
Stephen Schwabauer, Interim City Attorney *Manager*

APPROVED AS TO FORM

Janice D. Magdich, Interim City Attorney:

By: _____ *JDM*

ATTEST

By: _____
Randi Johl-Olson
City Clerk

ATTEST

Tadpole Cartesia, Inc.

By: _____
Jason Linley, President